

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Lexstar Construction, LLC,

Plaintiff,

vs.

United Fire & Casualty Company, a foreign  
insurance company,

Defendant.

Civil No.: 08-2016-CV-01380

**COMPLAINT**

[¶1] Plaintiff Lexstar Construction, LLC ("Lexstar"), for its Complaint against Defendant United Fire & Casualty Company ("United Fire"), states and alleges:

**PARTIES**

[¶2] Lexstar is a North Dakota limited liability company that engages in the business of commercial construction.

[¶3] United Fire is a foreign insurance corporation authorized to and doing business in the State of North Dakota.

**FACTUAL BACKGROUND**

[¶4] At all times material herein, United Fire had in full force and effect a commercial general liability bearing policy number 60410688, issued to Lexstar, as the named insured, for the policy period of January 6, 2013, through January 6, 2014.

[¶5] While the United Fire policy was in full force and effect, Lexstar contracted with NDIT, LLC for the construction of the Bismarck Information Technology Division building ("ITD building").



[¶6] The United Fire policy provides coverage for property damage to the ITD building.

[¶7] On March 27, 2013, Lexstar contracted with Davis Companies, LLC ("Davis") to be the project concrete contractor for the ITD building. Davis was contracted to construct footings, pour floors, foundations, a slab-on-grade, interior columns, curb and gutter, and the parking lot.

[¶8] On May 16, 2013, Lexstar contracted with Jem Construction, Inc. ("Jem") to be the excavation contractor for the ITD building.

[¶9] While the United Fire policy was in full force and effect, Jem did not properly excavate underneath columns that held the floors above them and failed to properly excavate or backfill under the columns.

[¶10] While the United Fire policy was in full force and effect, Davis failed to properly pour concrete on a column at gridline B6 because it did not center it on the footing and failed to pour concrete footings to the proper width and depth resulting in undersized footings. These undersized footings sank to various degrees throughout the building.

[¶11] In October 2013 Lexstar discovered that the ITD building had moved along a north to south line on gridline B after Davis and Jem completed their work on the columns and footings. The movement of the ITD building was the direct and proximate result of Davis and Jem's actions as outline above.

[¶12] Due to the movement of the ITD building, repairs became necessary.

[¶13] The property damage was the sole fault of Lexstar's subcontractors. The necessary repairs delayed construction of the ITD building by 12 weeks.

[¶14] In January 2014 regular construction on the ITD building was resumed. By January 2014 Lexstar had incurred considerable damages and expense for the building repairs and the delay in construction. Specifically, Lexstar sustained damages in excess of \$900,000 for the repairs and delay.

[¶15] Thereafter, Lexstar submitted a claim to United Fire for the damages it incurred from the issues with the ITD building outlined above.

[¶16] United Fire has repeatedly refused to provide coverage for Lexstar's claim for the damages it incurred with the ITD building during the policy period.

#### **COUNT I – BREACH OF CONTRACT**

[¶17] United Fire provided a commercial general liability bearing policy number 60410688 to Lexstar for the policy period of January 6, 2013, through January 6, 2014.

[¶18] During the time period in which the United Fire policy was in full force and effect, an occurrence occurred, as outlined above, which resulted in property damage to the ITD building and in which Lexstar incurred damages in excess of \$900,000.

[¶19] Despite Lexstar submitting its claim for damages relating to the ITD building pursuant to the United Fire policy, United Fire has refused to provide coverage and has thereby breached the United Fire policy.

[¶20] Lexstar has suffered damages as a direct and proximate result of United Fire breaching the United Fire policy with Lexstar.

#### **COUNT II – BAD FAITH**

[¶21] United Fire has acted unreasonably in handling Lexstar's claim concerning damages incurred relating to the ITD building.

[¶22] United Fire has acted unreasonably by failing to compensate Lexstar for Lexstar's loss which is covered by the United Fire policy.

[¶23] United Fire does not have any proper reason to refuse payment to Lexstar.

**COUNT III – DECLARATORY JUDGMENT**

[¶24] Lexstar is entitled to a declaratory judgment pursuant to North Dakota Century Code Ch. 32-23, against United Fire declaring that Lexstar is entitled to coverage for damages incurred relating to the ITD building pursuant to the United Fire policy.

**PRAYER FOR RELIEF**

[¶25] WHEREFORE, Plaintiff prays for judgement as follows:

[¶26] That Plaintiff be awarded money damages in excess of \$900,000;

[¶27] Declaring, pursuant to North Dakota Century Code Ch. 32-23, that Defendant United Fire is obligated to provide coverage to Plaintiff for damages Plaintiff incurred relating to the ITD building.

[¶28] Declaring and determining that Plaintiff is entitled to recover an amount in excess of \$900,000 against Defendant United Fire.

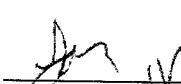
[¶29] That Plaintiff be awarded judgment against Defendant United Fire in an amount in excess of \$900,000;

[¶30] That Plaintiff be awarded its attorney's fees in this litigation against Defendant United Fire, an insurance corporation, in accordance with the North Dakota Declaratory Judgment Act, Ch. 32-23, N.D.C.C., along with *State Farm v. Sigman*, 508 N.W.2d 323 (N.D. 1993) and *Western Nat'l. Mut. Ins. Co. v. Univ. of N.D.*, 663 N.W.2d 4 (N.D. 2007).

[¶31] That Plaintiff be awarded its costs, disbursements in this action.

[¶32] That Plaintiff be awarded whatever other relief the Court deems just and equitable.

Dated this 13<sup>th</sup> day of May, 2016.

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